



No.22-14031-W JJ

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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MICHAEL J. POLELLE

*Plaintiff-Appellant*

V.

CORD BYRD, solely in his official capacity as Florida Secretary of State  
and

RON TURNER, solely in his official capacity as Supervisor of Elections for  
Sarasota County, Florida

*Defendants-Appellees*

Appeal from the United States District Court for the Middle District of Florida  
No.8:22-CV-1301-SDM-AAS

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**MOTION TO STAY ISSUANCE OF THE MANDATE**

IN

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—  
Michael J. Polelle

Pro Se

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## MOTION TO STAY MANDATE

Pursuant to FRAP 41 and local rule 41-1, the Plaintiff-Appellant, Michael J. Polelle, respectfully moves this Court to stay the mandate in this case, which was issued on May 6, 2025, until the United States Supreme Court rules on his intended Petition for a Writ of Certiorari to that Court, or at least until August 4, 2025, 90 days after the denial of his petition for panel rehearing and the last date for Polelle to file a petition for certiorari with the United States Supreme Court, and in support thereof alleges the following:

A court may stay issuance of its mandate pending the disposition of a petition for a writ of certiorari when the certiorari petition “would present a substantial question and that there is good cause for a stay.” Fed. R. App. P. 41(d)(2)(A).

### Substantial Question

As of October 7, 2024, a little over three million active Florida voters were registered, like Polelle, as not politically affiliated (NPA). Book Closing 107/23, Florida Dept. of State, Div. of Elections. The decision to grant or not grant their right to vote under the First Amendment and Equal Protection Clause of the U.S. Constitution in political primaries has a substantial effect on this growing non-partisan Florida electorate

The concurring opinion of Judge Abudu, joined by Judge Rosenbaum, recognized the substantial constitutional question posed by this case: “While *Nader*’s holding is still the applicable legal standard in these types of voter access cases, the electoral landscape is changing such that the First and Fourteenth Amendment implications of *Nader* warrant serious consideration.” (Concurring Op. at 80 of 112).

The only opinion of the Supreme Court relating to the issue is a nearly fifty-year-old memorandum decision by that Court with a summary affirmance of a three-judge district court and no opinion. *Nader v. Schaffer*, 417 F. Supp. 837 (D.Conn. 1976), *aff’d* 429 U.S. 989 (mem.). The members of the panel have even disagreed about the precedential value of *Nader* regarding Polelle’s standing to bring his action. “The majority mischaracterizes my objection to its reliance on *Nader*. My point is simple. *Nader* carries little, if any, weight as a precedent on the law of standing.” (Tjoflat J., Partial Dissent, Op. at 102 of 112, fn.1).

“We do not endorse the reasoning of the district court when we order summary affirmance of the judgment.” *Bush v. Vera*, 517 U.S. 952, 996 (1996)(Kennedy J. concurring). Therefore, this case is most apt for review by the Supreme Court. After almost fifty years, with material changes in the nature of the American electorate, as noted by this Court, and the evolution of First Amendment and Equal Protection law by the Supreme Court, it is only the Supreme Court that can provide contemporary reasoning for whether Polelle is right or wrong.

The Supreme Court has itself said the decision to overrule a prior decision is particularly appropriate where the Court has based its decision on the Constitution because amendments are exceedingly difficult and the country would realistically be “stuck with a bad decision unless we correct our own mistakes.” *Dobbs v. Jackson Women’s Health Org.*, 597 U. 215, 264 (2022). Polelle suggests that the Eleventh Circuit Court of Appeals should allow the Supreme Court an opportunity to review *Nader* to determine whether it is a “bad decision” or not, and if it is, what the reasoning for that decision is. Our system of jurisprudence requires that law be supported by reasons.

Moreover, the members of the Supreme Court have disagreed about the proper interpretation of the *Anderson-Burdick* test for voting cases and whether it is in fact a “balancing approach,” as interpreted by Justice Stevens, writing the majority opinion or a two-tiered test proposed by former Justice Scalia in his concurring opinion in *Crawford v. Marion County Election Bd.* 553 U.S. 181, 191 (Stevens, J.), 205 (Scalia, J.) Preliminary research on a petition for certiorari has indicated a split in the federal circuit courts of appeals regarding these two approaches.

In short, the fact that this Court in its decision encompassed an Opinion of the Court, a Concurring Opinion, and Partial Dissent indicates there are substantial questions for the Supreme Court to consider.

### **Good Cause for a Stay**

Good cause exists for a stay of the mandate because Polelle intends to file a writ of certiorari to the Supreme Court regarding the issues in this case and his motion is not for purposes of delay.

## U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND  
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MICHAEL J. POLELLE vs. FLORIDA SECRETARY OF STATE Appeal No. 22-14031

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Davis, Ashely E., Esq.

Florida Secretary of State's Office

Gaillard, Ashley E., Esq.

Merryday, Hon., Steven, U.S., District Judge

Michael J. Polelle, Esq.

Sarasota County Elections Office

Turner, Ron, Sarasota County Supervisor of Elections

Florida Voters registered with "No Party Affiliation"

Wallace, David A., Esq.

Submitted by:  
Signature: Michael J. Polelle

Name: Michael J. Polelle

Prisoner # (if applicable):

Address: 1102 Ben Franklin Drive Unit 511 Sarasota, Florida 34236

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(s)

Michael J. Porell

Attorney for

Pro SE Plaintiff-Appellant

Dated:

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U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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Michael J. Polelle vs. Cord Byrd et al. Appeal No. 22-14031 JS

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